

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 AKRAM FARGHALY, et al., 16-CV-6660 (NG)
4 Plaintiffs, United States Courthouse
5 -versus- Brooklyn, New York

6 THE CITY OF NEW YORK, ET January 27, 2023
7 AL., 11:00 a.m.

8 Defendants.

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10 TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
11 BEFORE THE HONORABLE NINA GERSHON
12 UNITED STATES SENIOR DISTRICT JUDGE

13 APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript
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Rivka Teich CSR RPR RMR FCRR
Official Court Reporter

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1 (Video Conference.)

2 THE COURTROOM DEPUTY: Civil cause for a hearing on
3 Farghaly versus City of New York, 16-CV-660, before Judge
4 Gershon.

5 May I have the appearance for the plaintiff.

6 MR. NAZRALI: Rehan Nazrali for the plaintiffs.

7 THE COURT: Can I get the spelling of your last
8 name, sir?

9 MR. NAZRALI: N-A-Z-R-A-L-I.

10 THE COURTROOM DEPUTY: For the defendant?

11 MS. MCGUIRE: Caroline McGuire for the defendant.

12 THE COURT: Good morning, counsel.

13 I wanted to first speak with you about what is going
14 to be happening after today and after today's hearing, and
15 then we'll get into the motions, which are defendant's motion
16 in limine, plaintiff's motion in limine, and defendant's
17 motion to preclude the expert opinions of Dr. Koyen and Dr.
18 Uhrig. I want you to know that I do not anticipate that I
19 will be handling the jury trial for the foreseeable future.
20 For that reason, I want to layout for you what your options
21 are. You won't be asked by me to make any decisions today but
22 I want you to speak about it among yourselves after today's
23 conference. And I'll give you a date by which I want to hear
24 from you.

25 Let me just talk to you about those options. The

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1 first option would be that you consent to the magistrate
2 judge, who at this time is Magistrate Judge Ramon Reyes, who
3 is actually up for becoming a district judge in our district.
4 It looks like that may happen fairly soon, but we can't
5 predict these things. I noted that in your pretrial order you
6 did not consent to a magistrate judge, but maybe your views
7 will change after what we discuss at today's hearing. I
8 wanted to lay that out. That's option number one, consent to
9 the assigned magistrate judge, Judge Reyes.

10 The second option, which you may or may not be
11 familiar with, is that you can consent to a different
12 magistrate judge to be selected at random. In other words,
13 you cannot just say I want judge so and so, selected at
14 random. If you look at the consent form for magistrate judge
15 you'll see that is described. But I need you to understand
16 that if you do choose that option, once another magistrate
17 judge is selected for trial purposes, you're committed to
18 that. You can't say, oops, I've changed my mind I want to go
19 back and go to a district judge or a different magistrate
20 judge. I think that's clear from the notice form; I wanted to
21 make it completely clear.

22 The third option is you can use the services of
23 Judge Reyes for settlement purposes. I'm hoping that once I
24 resolve these motions you'll have a better idea of what the
25 trial will look like for each side and it may help you reach a

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1 settlement, which I appreciate you were not able to do before.

2 The fourth option is that since the pandemic in the
3 Court we have a trial ready program that our ADR office runs
4 in which they reach out to former magistrate judges who have
5 retired from the bench but are still working for the purposes
6 of settlement, and that has been a very affective procedure.
7 You might want to think about that.

8 Then finally, if there is no prospect of settlement
9 and if there is no consent to trial before a magistrate judge,
10 the fifth option is that I will send this case out for
11 reassignment to another district judge for trial purposes.

12 Let's say within three weeks, February 17, after
13 you've had a chance to confer with each other let me know in a
14 joint letter which option you've chosen.

15 Will that work for you, three weeks to hear from
16 you?

17 MR. NAZRALI: Yes, your Honor.

18 MS. MCGUIRE: Yes, your Honor.

19 THE COURT: Obviously you don't need to tell me --
20 if you've decided that you want to go to a district judge, you
21 don't need to tell me you didn't consent to a magistrate
22 judge. We don't like to know who consented and who didn't.
23 With no pressure on you, just let us know what the choice is.

24 In the meanwhile, as I said, today I'd like to hear
25 from you on your motions if you have anything that you want to

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1 add to your papers; otherwise, I'll go ahead and rule on the
2 motions.

3 Anything that either of you would like to add?

4 MR. NAZRALI: No, your Honor.

5 MS. MCGUIRE: Nothing for defendants, your Honor.

6 THE COURT: Okay. I should also say that obviously
7 an assigned trial judge can make changes, but I do think it
8 would be useful to have my rulings on the record based on my
9 familiarity with the case. Because I'll not be trying the
10 case, for the most part I'm not going to be discussing
11 proposed voir dire and requested charge with you, which you
12 also have in your papers, I'll leave that to the trial judge.
13 But there were two requests that the defendants made in their
14 motion in limine relating to the jury instructions, I will
15 address those.

16 In the defendant's motion in limine first, there
17 were some issues that came up, which were really on request by
18 the plaintiff even though it was the defendant's motion. I
19 think I should address that first.

20 Plaintiff requested a preclusion of any references
21 to Officer Soto's probable cause for the arrest. That request
22 is granted. Officer Soto's probable cause for the arrest is
23 of no moment to the plaintiff's remaining claims relating to
24 excessive force.

25 The second topic are two requests that are related,

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1 I'll address them together. Those are plaintiff's requests to
2 preclude references to the facts of the arrests and
3 defendant's request to instruct the jury that the arrest was
4 lawful.

5 Plaintiff's request to preclude references to the
6 facts of the arrest is denied. The arrest is relevant and
7 necessary to allow the jury to understand the entire timeline
8 of events, and that timeline should not be unnaturally
9 truncated. The arrest also provides context for exhibits,
10 which defendants have identified in their pretrial order,
11 including arrest report, mug shots, and the like. Nothing
12 that I can see in Federal Rule of Evidence 403 justifies
13 preclusion of references to the facts of the arrest. It says
14 nothing about whether the arrest was lawful or not, so as to
15 be unfairly prejudicial to plaintiffs, and I think truncating
16 the timeline would lead to more, not less, jury confusion and
17 speculation. So this request is denied.

18 On the other hand, I would instruct the jury that
19 they do not need to concern themselves and should not
20 speculate about whether the arrest was lawful or not; because
21 whether it was lawful or not isn't relevant to plaintiff's
22 claims. This instruction would address, in my mind,
23 defendant's concern that the jury may otherwise seek to
24 compensate the plaintiffs for the entire incident, including
25 the arrest, while also avoiding prejudice to the plaintiffs

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1 that could result from going as far as the defendant's suggest
2 and instructing the jury that the arrest was lawful. We want
3 to make sure that the jury is not conflating the lawfulness of
4 the arrest with the lawfulness of the use of force. We want
5 to separate that. In short, I would permit references to the
6 facts of the arrest, but instruct the jury that they are not
7 to consider or speculate as to whether the arrest was lawful
8 or not.

9 The next topic is two requests, which are also
10 related. Defendant's request that plaintiffs be precluded
11 from referring to the defendants and their counsel as the
12 city, city attorneys or corporation counsel. And defendants'
13 request that the jury only be instructed on the federal
14 excessive force claim rather than on both the federal claim
15 and the state law assault and battery claim.

16 So I'm now addressing Ms. McGuire. What I have
17 typically done in the past, which has been affective, and you
18 may be familiar with this practice, I would be prepared to
19 direct that plaintiffs not be permitted to refer to defendants
20 as city counsel and just be referred to as the individual
21 defendant and individual defendant's counsel. As wells to
22 combine the federal and state jury charges, so long as the
23 city commits on the record that if the jury finds that the
24 individual defendant used excessive force that the city is
25 indeed vicariously liable understate law respondeat superior

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1 doctrine for the verdict against the individual defendant.

2 MS. MCGUIRE: Understood, your Honor. I believe we
3 concede that Officer Mitchell was acting within the scope of
4 his employment, which would obviate the respondeat issue.

5 THE COURT: When you say obviate it, you mean the
6 city is bound by it.

7 MS. MCGUIRE: We would be bound by it. But what I
8 would just note, is based on state law we don't make
9 indemnifications until a final judgment is rendered.

10 THE COURT: Indemnification is a completely
11 different issue. Whether the city indemnifies the defendant
12 or not, is the city itself is liable under respondeat
13 superior, it pays. Period. Right?

14 MS. MCGUIRE: Correct.

15 THE COURT: Okay, so that's what I'm talking about.
16 I'm not talking about -- we don't have to go into the whole
17 indemnification issue.

18 The question is, do you accept that if I combine and
19 just talk about excessive force, I don't tell the jury it's
20 federal law, it's state law, whatever, that just describe what
21 the charge is, just describe in the charge what the elements
22 of an excessive force claim is, that you understand that if
23 they find excessive force it means that state law as well as
24 federal law has been violated and the city has to pay due
25 respondeat superior.

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1 MS. MCGUIRE: Yes, your Honor. We understand that.

2 THE COURT: Okay. Do you agree to that? If you
3 agree to that, then I think my solution is a good one. I'll
4 hear from plaintiff's counsel as well, but I want to know
5 first what your position is.

6 MS. MCGUIRE: Your Honor, I believe defendants would
7 be inclined to agree with that. But I would like to just run
8 it up to my supervisor before putting it on the record that we
9 do agree. Perhaps in the joint letter due on February 17 we
10 can indicate whether or not we would agree to that.

11 THE COURT: Okay. Just understand that if you
12 don't, I would deny both of your requests.

13 MS. MCGUIRE: Understood, your Honor.

14 THE COURT: Okay Mr. Nazrali.

15 MR. NAZRALI: Yes. I mean, I think the argument for
16 vicarious liabilities has been made, it's clear as evidence.
17 I think counsel has the authority and the legal name to
18 countenance the request of the Court. But I believe that the
19 Court's wisdom is prudent here I think. I concur with the
20 Court's position.

21 THE COURT: Okay. We'll note that we'll hear from
22 defendants.

23 I want to put on the record, just so everything is
24 clear going forward, certain requests that were unopposed and
25 they are going to be granted as unopposed. There are quite a

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1 few of these.

2 Defendants request that plaintiffs be precluded from
3 referencing any claims that were dismissed or voluntarily
4 withdrawn by plaintiffs or introducing evidence such as
5 damages concerning those claims. That's one.

6 Second one is defendants request that plaintiffs be
7 precluded from suggesting or presenting evidence regarding
8 indemnification of traffic agent Mitchell.

9 The third is defendants' request that plaintiffs be
10 precluded from offering any evidence or eliciting any
11 testimony about the NYPD patrol guide, provision, training or
12 policy.

13 The fourth is defendants' request that plaintiffs be
14 precluded from inquiring into Mitchell's or other officers
15 past acts, including Officer Soto.

16 The fifth is defendants' request that plaintiffs be
17 precluded from offering any testimony or arguing about what
18 they believe traffic agent Mitchell could or should have done.

19 The sixth is defendants' request that plaintiffs be
20 precluded from referring to other instances of police
21 misconduct.

22 And finally both parties agree that neither side
23 should suggest a specific dollar amount to the jury on
24 summation or at any time during the trial.

25 Have I got those correct?

Rivka Teich CSR RPR RMR FCRR
Official Court Reporter

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1 MR. NAZRALI: Yes.

2 THE COURT: There were also a couple of requests
3 that were withdrawn, I'm going to treat them as withdrawn by
4 the defendants and make no ruling on them.

5 The first related to plaintiffs' introduction of
6 traffic agent Mitchell's deposition transcript for substantive
7 purposes.

8 The second was the defendants' request that the city
9 be removed from the caption. That was based on an earlier
10 argument which the city has withdrawn.

11 The plaintiffs had only one request in their motion
12 in limine and that the bystander video recording be excluded.
13 While recognizing the relevance of the video, plaintiffs argue
14 it should be excluded under Rule 403. I'm going to deny that
15 request.

16 Going through the various grounds that are possible
17 under 403, the video is not cumulative. It provides a
18 perspective of the altercation that will not come from a party
19 witness. Relatedly, it depicts body language and contains
20 audio that will not be captured by the parties' testimony. It
21 will also assist the jury in determining what took place
22 before the video begins. The jury can consider whether the
23 events, body language, and the audio in the video make
24 plaintiffs' or defendants' version of events taking place
25 before the video more or less likely. I'm not persuaded by

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1 the two reasons that the plaintiffs offer as to why the video
2 will unfairly prejudice them. And any risk of unfair
3 prejudice certainly does not substantially outweigh the
4 video's probative value as required by Rule 403.

5 Prejudice contemplated by Rule 403 must go beyond
6 merely favoring one side. It must be unfairly prejudicial.

7 First, plaintiffs' argument that jurors will give me
8 weight to the video because it is a video while the plaintiffs
9 will only be offering oral testimony about what happened, is
10 simply an argument that the video favors the defendants, which
11 have already stated is not a reason to exclude it under 403.
12 Courts in this circuit permit video evidence even when it
13 favors one party.

14 I also reject the plaintiffs second argument for
15 excluding the video, which is that it doesn't depict the
16 entire altercation. I think the jury can understand that the
17 video doesn't do that, and will be able to consider
18 Mr. Farghaly's testimony to what happened prior to the video.
19 The request to preclude the bystander video is denied.

20 Any comment on that?

21 MR. NAZRALI: No, your Honor. That's fine.

22 THE COURT: Okay. Let me go on to the defendants'
23 Daubert motion, which is governed by Federal Rule of Evidence.
24 702.

25 In the Daubert case, 509 U.S. 579, the Supreme Court

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1 explained that Rule 702 contemplates -- (audio
2 interruption) -- for the trial judge, but it also makes clear
3 that the ruling bodies of liberal standard of admissibility
4 for expert opinions, I would cite Second Circuit case 1995,
5 *McCulloch versus H.B. Fuller Company*, 61 F.3d 1038 at 1042 to
6 44, as just an example of that principle. The trial court's
7 gatekeeper role is not intended to serve as a replacement for
8 the adversary system. As Daubert explained, quote, "vigorous
9 cross-examination, presentation of contrary evidence, and
10 careful instruction on the burden of proof are the traditional
11 and appropriate means of attacking shakey but admissible
12 evidence," close quote.

13 With these principles in mind, I for the most part,
14 deny defendants' motion to exclude the testimony of Dr. Koyen
15 and Dr. Uhrig. Although I grant the motion to the extent it
16 seeks to exclude the doctors from just regurgitating the
17 factual narrative of the altercation as told to them by
18 Mr. Farghaly in their testimony. And I'd like to explain my
19 reasons for that now.

20 Beginning with Dr. Koyen. Defendants seek to
21 exclude the testimony of this doctor because they argue
22 plaintiffs have not established that he's qualified to render
23 the opinions he offers and his testimony is not based on
24 reliable methods. Now, whether an expert is qualified is a
25 question that is important. But when it comes to medical

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1 doctors, courts don't demand that the medical doctor be a
2 specialist in the exact area of medicine implicated by the
3 plaintiff's injury, if the doctor has the educational and
4 experiential qualifications in a field closely related to the
5 subject matter in question. Here, Dr. Koyen's CV establishes
6 that he has been in private practice as a physiatrist for 15
7 years. The American Academy of Physical Medicine and
8 Rehabilitation, with which he's affiliated, explains that a
9 physiatrist treats a wide variety of medical conditions
10 affecting the brain, spinal cord, nerves, bones, joints,
11 ligaments, muscles and tendons. Dr. Koyen's own practice,
12 according to his CV, includes rehabilitation after stroke,
13 rehabilitation after surgery, electro diagnostic studies,
14 trauma care, senior care, neurodiagnosis and care, and
15 employment-related injury care. According to his CV, his
16 education and training includes a residency in physiatry at
17 the Kingsbrook Jewish Medical Center from 1987 to 1990. A
18 residency in general medicine at Salem Hospital from 1986 to
19 1987. Attendance at Boston University School of Medicine.

20 This experience, training, and education clearly
21 qualifies him to diagnose Mr. Farghaly's lumbar spine injury
22 and offer an opinion on causation based on his review of two
23 MRIs in Mr. Farghaly's lumbar spine and his own physical
24 examination.

25 The defendants challenge the reliability of

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1 Dr. Koyen's diagnosis and causation in them. Courts
2 considering the reliability of such testimony consider a
3 variety of factors, including the doctor's training and
4 experience, and whether the doctor reviewed the patient's
5 medical records, performed diagnostic tests, and examined the
6 patients. Dr. Koyen, as the report makes clear, he reviewed
7 Mr. Farghaly's medical records, including two MRIs of the
8 lumbar spine, that he physically examined Mr. Farghaly, and
9 that he performed diagnostic tests. So this is sufficiently
10 reliable for a medical doctor to diagnose the injury and also
11 to render an opinion as to the cause of the injury.

12 Now in this case the defendants have argued
13 principally that his opinion isn't reliable because he didn't
14 explain how he reached his causation opinion and did not
15 explicitly rule out other causes. The defendants speculate
16 that Mr. Farghaly's lumbar spine injury could have been caused
17 by some other cause, such as his job. Well, while it's true
18 that Dr. Koyen does not explicitly spell out how he reached
19 his conclusions regarding causation, as one judge had
20 explained in rejecting a Daubert challenge, I believe it
21 actually was -- I'm trying to think of the name of the
22 judge -- a very fine judge who was also corporation counsel at
23 one point coincidentally. The case was Reyes versus Delta
24 Dallas Alpha Corp. 2000 Westlaw 526851 at page two, or star
25 two I should say, Southern District of New York May 2, 2000,

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1 said, "this is not a case involving complex questions of
2 medical causation where it would be necessary to use
3 sophisticated scientific theory or methods to determine the
4 cause of injury."

5 I'm satisfied that Dr. Koyen's review of the medical
6 records and his physical examination, including performing
7 diagnostic tests, are sufficiently reliable methods of
8 rendering an opinion as to the cause of the lumbar spine
9 injury.

10 Defendants challenges go to the weight not the
11 admissibility of Dr. Koyen's testimony, and can be explored by
12 the defendants on cross-examination.

13 Turning now to Dr. Uhrig. His testimony is
14 challenged on the ground that plaintiffs have not established
15 that his testimony will assist the trier of fact and is
16 reliable. I reject both of these grounds.

17 Obviously, for expert testimony to assist the trier
18 of fact as required by 702 it has to be relevant, and it
19 shouldn't be directed solely to lay matters which a jury is
20 capable of understanding and deciding without the expert's
21 help. Here, the defendants argue that a jury can understand
22 plaintiff's purported injuries without Dr. Uhrig's unnecessary
23 assistance, and an expert is not needed to explain how one
24 might feel after a sudden event. I disagree.

25 According to his CV, Dr. Uhrig is a New York state

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1 licensed psychologist, also a Ph.D in counseling psychology,
2 has been employed in the field since at least 2009, and since
3 2012 has maintained his own psychology practice. Dr. Uhrig's
4 diagnostic impressions of Mr. Farghaly were major depression
5 and anxiety disorder. His diagnostic impressions of
6 Mr. Farghaly's wife, Ms. Mohammed, were major depression,
7 anxiety disorder, and posttraumatic stress disorder/chronic.
8 He opined that these conditions were caused by the altercation
9 with traffic agent Mitchell. Such opinions with these type of
10 diagnostic impressions require a medical professional; clearly
11 they couldn't be made by a jury without a doctor's assistance.

12 It is more than, as defendants characterize the
13 testimony, that plaintiffs felt upset after a sudden event.
14 So I'm not going to exclude Dr. Uhrig's diagnostic impressions
15 on the ground -- and causation of opinion -- on the ground
16 they wouldn't assist the trier of fact.

17 Now, the defendants also argue that Dr. Uhrig's
18 diagnostic impressions and causation opinion are not based on
19 reliable methodology. But his testimony is based on his
20 meeting with and, quote, "mental status examination," close
21 quote, of the two plaintiffs. It's apparent that Dr. Uhrig,
22 relying on his years of experience as a psychologist, training
23 and education, rendering his diagnostic impressions and
24 causation opinion. I'm satisfied that a meeting and
25 discussion is a reliable method for qualified psychologist to

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1 diagnose psychological injuries and render an opinion as to
2 their cause.

3 And defendants offer no basis for thinking that
4 those aren't the reliable methods for use by a psychologist.

5 To the extent that defendants take issue with
6 Dr. Uhrig's opinion as being, quote, "diagnostic impressions,"
7 close quote, or for not sufficiently explaining his reasons
8 for reaching his diagnosis or causation opinion, such
9 challenges go to the weight and not the admissibility of the
10 testimony.

11 Finally, I do want to go back to what I said in the
12 beginning. That I do agree with the defendants that neither
13 doctor should be permitted to just regurgitate the narrative
14 facts about the altercation between the traffic agent and
15 Mr. Farghaly, which would be simply repeating what
16 Mr. Farghaly told them. Such testimony is cumulative of other
17 evidence and it's not the appropriate subject of expert
18 testimony. This ruling, of course, is subject to being
19 revisited if, for example, the defense were to open the door
20 in cross-examination.

21 In sum, I deny the Daubert motions, except to the
22 extent that the doctors are not permitted to testify as to the
23 narrative of the altercation as told to them by Mr. Farghaly.

24 That, counsel, will conclude my rulings. I'm
25 wondering if there was anything else that I could help you

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1 resolve today that would help move this case forward?

2 MR. NAZRALI: Yes, your Honor. The question about
3 the ruling with respect to the Daubert motion and exclusion of
4 the apparent regurgitation of --

5 THE COURT: Yes.

6 MR. NAZRALI: That doesn't exclude the plaintiff
7 from asking the doctors why the plaintiff first sought
8 treatment with them, right? They would have to refer to
9 the --

10 THE COURT: I think obviously they would have to
11 refer to it in a very general way, why he came, that he came,
12 he reported that he came after an incident that occurred with
13 a traffic agent. He may say he was arrested or not. But he
14 has to say something, of course. I agree with you.

15 What I'm saying is that Mr. Farghaly, from what I
16 know from motion for summary judgment, has a long and detailed
17 explanation of what happened. And what I'm trying to avoid is
18 the situation where his version of events becomes treated as a
19 version that is accepted by the jury because it's recited by
20 an apparent expert.

21 MR. NAZRALI: I would want to connect that the
22 relationship between the doctors and the plaintiff is in fact
23 this event. It would be sort of -- it would be testifying
24 sort of in a vacuum if I don't have anything to contextualize
25 the relationship. I'm thinking somehow, even a limited --

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1 obviously reference would be essential, because that would set
2 the sort of space from which the jury will assess how they
3 arrived at their opinions.

4 THE COURT: I understand what you're saying. I
5 think you're making a very good point. I think, as I said, if
6 the defendants on cross-examination open the door to a
7 detailed recitation of what Mr. Farghaly said, that could
8 happen because the defendants may want to say, well, you're
9 relying just on what Mr. Farghaly told you, aren't you. I
10 would obviously -- that's what they have to, what the expert
11 has to rely on it. If they challenge that and go into the
12 details of what Mr. Farghaly said, well, obviously you have to
13 be able to address that as well.

14 Maybe this is something that counsel can talk about
15 before the trial and have a sense of -- for example, maybe a
16 good idea, Mr. Nazrali, would be for you to identify how you
17 intend to approach that with the doctor in your direct
18 examination. See if the defense has any objection to it.

19 MR. NAZRALI: A limited exploration of why they are
20 there and connecting it to each other.

21 THE COURT: Right. And the doctor may have to say,
22 well, if he got punched in the chest by a traffic agent, this
23 could make him feel X, Y, Z. I don't know exactly what his
24 testimony will be. So there would have to be some reference
25 to why Mr. Farghaly is seeing a psychologist. I just don't

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1 want a situation where you would ask the doctor, well, and
2 Mr. Farghaly told you X and Y and Z, you make a long marshaling
3 of Mr. Farghaly's evidence through the expert; and then it
4 becomes as if the expert is setting forth the same evidence
5 that Mr. Farghaly did.

6 MR. NAZRALI: Your Honor, if I may. The
7 psychologist, he's particularly bound by a narrative. He's
8 bound by that. He makes his judgments by assessing this
9 narrative essentially, and determining the inflexion points in
10 that narrative. Those are critical. For example, the
11 contact. The contact is the trauma. For me, if I can't
12 reference it, what is the basis of your finding for trauma,
13 well, he would have to describe that he underwent a traumatic
14 incident and what the details of that are, are part of the
15 basis of his diagnosis.

16 THE COURT: I think they said, to the extent that
17 that's correct, then I think he does have to discuss it. But
18 it can be done in a way where he is reciting where it's known
19 that it's based on what Mr. Farghaly told him, and that he
20 doesn't have any -- obviously he wasn't there -- he doesn't
21 have any personal knowledge of it.

22 MR. NAZRALI: So a caveat: This is based on what
23 Mr. Farghaly said to you, right, Doctor?

24 Something like that? Some kind of --

25 THE COURT: That may be sufficient. As I say, it

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1 makes sense for you to prepare your direct on this and share
2 it with defense counsel so that if there are any disputes
3 about the way it's stated they can be handled in advance of
4 the trial.

5 MR. NAZRALI: So we will revisit this question a
6 little bit further at the time of the trial.

7 THE COURT: Yes.

8 Ms. McGuire, are you okay with this?

9 MS. MCGUIRE: Yes, your Honor. Defendants agree
10 with your Honor's ruling that the doctor shouldn't be giving
11 the narrative events to the jury. I think that was the heart
12 of your Honor's ruling.

13 THE COURT: Yes. But it may come up in the course
14 of a question as to what the basis for his concluding that
15 there was mental trauma.

16 MS. MCGUIRE: Yes.

17 THE COURT: Okay. Anything else that we can take
18 care of today?

19 MR. NAZRALI: I'm always amenable to discussion for
20 settlement. That's something for counsel for the city has to
21 be prepared for.

22 MS. MCGUIRE: I was going to say nothing further for
23 defendants, your Honor.

24 THE COURT: Okay. I think we'll look forward to
25 hearing from you February 17, I believe is the date, on one

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1 thing relating to the motions, the other thing about how you
2 want to go forward. If you do want settlement discussions, my
3 various options suggested things that could be done.

4 Thank you very much.

5 MR. NAZRALI: Thank you.

6 MS. MCGUIRE: Thank you.

7 (Whereupon, the matter was concluded.)

8 * * * * *

9 I certify that the foregoing is a correct transcript from the
10 record of proceedings in the above-entitled matter.

11 /s/ Rivka Teich

12 Rivka Teich, CSR RPR RMR FCRR

13 Official Court Reporter

14 Eastern District of New York

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Rivka Teich CSR RPR RMR FCRR
Official Court Reporter